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Nos. 635, 636, 637, 638, 639, 640, 641, 642, and 643

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CHARLES ELMORE CR

CL

In the Supreme Court of the United States

OCTOBER TERM, 1930

MERCHANTS WAREHOUSE COMPANY, Appellant, v. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND JAMES GALLAGHER, ET AL.

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., Appellants, v. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and JAMES GALLAGHER, ET AL.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and WALTER A. BAILEY, ET AL., Appellants, v. MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' & IMPORTERS' EXCHANGE OF PHILADELPHIA

THE PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY, Appellant, v. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and WALTER A. BAILEY, ET AL.

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., Appellants, THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and WALTER A. BAILEY, ET AL.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, WALTER A. BAILEY, ET AL., Appellants, v. THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' EXCHANGE OF PHILADELPHIA

THE PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, Appellant, v. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and REX & COMPANY, INC., ET AL.

PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., Appellants, v. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND REX & COMPANY, INC., ET AL.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND WALTER A. BAILEY, ET AL., Appellants, v. THE PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' & IMPORTERS' EXCHANGE OF PHILADELPHIA

APPEALS AND CROSS APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MOTION TO ADVANCE

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 635

MERCHANTS WAREHOUSE COMPANY, APPELLANT

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and JAMES GALLAGHER, et al.

No. 636

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, et al., appellants

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and JAMES GALLAGHER, et al.

No. 637

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and WALTER A. BAILEY, et al., appellants

v.

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' & IMPORTERS' EXCHANGE OF PHILADELPHIA

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No. 638

THE PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY, appellant

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and WALTER A. BAILEY, et al.

No. 639

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, the COMMERCIAL EXCHANGE OF PHILADELPHIA, BOARD OF TRADE, et al., appellants

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and WALTER A. BAILEY, et al.

No. 640

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, WALTER A. BAILEY, et al., appellants

v.

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, the COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' EXCHANGE OF PHILADELPHIA

No. 641

THE PHILADELPHIA WAREHOUSING & COLD STORAGE Company, appellant

v.

THE UNITED STATES OF AMERICA, INTERSTATE Commerce Commission, and Rex & Company, Inc., et al.

No. 642

PHILADELPHIA WAREHOUSING & COLD STORAGE Company, the Commercial Exchange of Philadelphia, Philadelphia Board of Trade, et al., appellants

v.

THE UNITED STATES OF AMERICA, INTERSTATE Commerce Commission, and Rex & Company, Inc., et al.

No. 643

THE UNITED STATES OF AMERICA, INTERSTATE Commerce Commission, and Walter A. Bailey, et al., appellants

v.

THE PHILADELPHIA WAREHOUSING & COLD STORAGE Company, the Commercial Exchange of Philadelphia, Grocers' & Importers' Exchange of Philadelphia

APPEALS AND CROSS APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MOTION TO ADVANCE

The United States, Interstate Commerce Commission, Walter A. Bailey, James Gallagher, et al., appellees and cross appellants, by their respective counsel, move that the above-entitled cases be advanced and set for an early hearing.

The suits were brought to enjoin and annul an order of the Interstate Commerce Commission issued December 28, 1929, in proceedings entitled *James Gallagher et al.* v. *Pennsylvania Railroad Company et al.*, 160 I. C. C. 563. The order directed the three railroad companies named therein to cease and abstain from publishing or making allowances to the Merchants Warehouse Company and Quaker City Cold Storage Company, Pennsylvania Warehousing & Safe Deposit Company, and Philadelphia Warehousing & Cold Storage Company in connection with the loading or unloading of carload package freight at Philadelphia, Pa., the Commission having found in its report that the allowances were unlawful rebates, payment of which resulted in unjust discrimination and undue prejudice to other warehouses in Philadelphia which performed similar services but which received no such allowances from the railroads. The court below found (R. 95) that the allowances were unlawful rebates, and in its written opinion

(*Merchants Warehouse Company* v. *United States et al.*, 44 F. (2d) 379, R. 58) sustained the Commission's finding that payment of the allowances resulted in unjust discrimination and undue prejudice, held that the order was valid in all respects, and entered its decree dismissing the petitions for injunction. From the decree the appeals were prosecuted and docketed in this Court on January 9, 1931. (Nos. 635, 636, 638, 639, 641, 642.) In its orders allowing the appeals the court below stayed and suspended enforcement of the Commission's order pending determination of the appeals by this Court. From the "stay orders" the cross appeals (Nos. 637, 640, and 643) were prosecuted and docketed January 9, 1931, in this Court.

The appeals involve the question whether the court below erred in sustaining the validity of the Commission's order and in entering its decree accordingly, dismissing the petitions for injunction. The question involved in the cross appeals is whether, after finding as a fact that the allowances were unlawful rebates, payment of which it held resulted in unjust discrimination and undue prejudice in violation of Sections 2 and 3, respectively, of the Interstate Commerce Act, and holding that the order was valid in all respects, the District Court erred in staying and suspending enforcement of the order pending determination of the appeals by this Court.

In support of the motion to advance, the appellees and cross appellants respectfully show that:

I. The questions involved in these cases are of public importance and their early determination by this Court is desirable in the enforcement and administration of the pertinent provisions of the Interstate Commerce Act.

II. The Commerce Court Act, c. 309; 36 Stat. 539, as amended and incorporated in Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 219 (U. S. C. Title, 28, Sec. 41 to 48), provides that appeals to this Court in cases involving orders of the Interstate Commerce Commission "shall have priority in hearing and determination over all other causes except criminal causes in that court."

III. Both the Commission and the court below have found and held that the allowances are unlawful rebates, payment of which results in undue preference of appellants and in unjust discrimination and undue prejudice against the other warehouse companies in Philadelphia (the parties who complained originally to the Commission) which perform similar services but receive no such allowances. By Section 1 of the Elkins Act, c. 708, 32 Stat. 847; c. 3591, 34 Stat. 584 (U. S. C. Title 49, Secs. 41 and 43) both the payment or receipt of rebates and the commission of discriminations are made criminal offenses, and Section 3 of that Act expressly empowers the several District Courts summarily, and "without the formal pleadings and proceedings applicable to ordinary suits in equity,"

to prevent and to require discontinuance of "any discriminations forbidden by law," through "proper orders, writs, and process," which "may be enforceable as well against the parties interested in the traffic as against the carrier, *subject to the right of appeal as now provided by law.*" The "stay orders" squarely oppose the policy and purpose of that Act in dealing with rebates and discriminations, for, manifestly, the legislative intent is to stop discriminations immediately and to deprive the guilty parties of the unlawful benefits and advantages thereof during the period required for determination of their appeals from the injunction of the District Court, whereas the "stay orders" in this case permit appellants to continue receiving the rebates and the benefits of the discrimination pending determination of the appeals.

IV. Since the Elkins Act makes it a crime to grant or receive rebates or discriminations, the "stay orders" permit the railroads and appellants to continue committing that offense against the public pending determination of the appeals.

V. The "stay orders" were improvidently granted under this Court's decision in *Virginian Railway Co.* v. *United States*, 272 U. S. 658, and deprive the warehouse companies which suffer the undue prejudice and unjust discrimination while the appeals are pending, of the benefits of the Commission's order, adjudged by the court below to be lawful in all respects; thus, in the event the judg-

ment is affirmed on the appeals, resulting in permanent disadvantage and injury to those warehouse companies.

VI. No bond was required by the court to indemnify the warehouse companies suffering the discrimination pending determination of the appeals, and since the railroad companies found guilty of paying the rebates and committing the discriminations were not parties to the suits, apparently to require such bond was not practicable; nor could a bond even if required, indemnify the public for the offense against it pending determination of the appeals.

The appellees and cross appellants consider that, under the circumstances, an early hearing of the cases should be had. In this connection it should be stated that the Clerk advises that it will take about a month to print the record.

Opposing counsel have been notified of this motion.

Respectfully submitted.

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Solicitor General.

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Assistant to the Attorney General.

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FEBRUARY, 1931.

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